



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: April 25, 2014

Approved

/s/ Edward K. Shikada

Date

4/25/14

COUNCIL DISTRICT: 3

SUBJECT: APPROVAL OF A BELOW MARKET SUBLEASE WITH PROSPECT SILICON VALLEY FOR SPACE AT THE SAN JOSE ENVIRONMENTAL INNOVATION CENTER, LOCATED AT 1608 LAS PLUMAS AVENUE

RECOMMENDATION

- (a) Conduct a Public Hearing concerning an economic development subsidy to be provided to Prospect Silicon Valley, or "Prospect SV," in connection with a below-market lease, pursuant to California Government Code Section 53083.
- (b) Adopt a resolution authorizing the City Manager, or his designee, to execute a below-market sublease, for an initial term of five (5) years, plus two (2) three (3) year extension options, with Prospect SV, for approximately 23,492 square feet of space in real property located at 1608 Las Plumas Avenue, known as the San Jose Environmental Innovation Center, or "EIC," for purposes of operating a clean technology demonstration center.

OUTCOME

The sublease of space at the EIC to Prospect SV will advance the City's Green Vision by promoting new business formation and job creation. Approval of the recommendation is the first step in facilitating Prospect SV's efforts to develop solutions that can help San Jose and other cities build an environment that requires less energy, emits fewer greenhouse gases, and produces less waste.

BACKGROUND

Environmental Information Center (EIC)

The EIC is located in a light industrial area at 1608 Las Plumas Avenue on a 4.2 acre property. The Housing Department acquired the original warehouse structure, which was historically owned by the City, in 1999 for a housing/training center. In 2006, the property was acquired by Environmental Services Department (ESD) for a Household Hazardous Waste facility and the development of the EIC. Construction of the facility began in Fall 2011 and is anticipated to be complete in Spring 2014. The EIC is expected to house the following tenants after completion:

- *Habitat for Humanity ReStore* (approximately 14,606 square feet) - which will operate a store that will sell discounted new or nearly new appliances, furniture, and building materials, and support the City's waste diversion efforts. Items typically are donated by home improvement stores and developers, who would otherwise likely dispose of them in a landfill. Council approved the lease agreement with Habitat for Humanity on June 21, 2011, and an amendment on August 20, 2013.
- *County of Santa Clara, Department of Agriculture and Environmental Management* (approximately 6,500 square feet) - which will operate a household hazardous waste drop-off facility where residents can safely and legally dispose of common toxic products (e.g. paint, batteries, pool and lawn chemicals) that cannot by regulation be placed in garbage or recycling containers, or poured down a drain or gutter. Council approved the lease agreement with the County on April 17, 2012, and an amendment on April 23, 2013.
- *Prospect Silicon Valley or "Prospect SV"* (approximately 23,492 square feet) - which will manage and program a "Clean Tech Demonstration Center" (CTDC), that through third party use agreements, in a form approved by the City, will provide flexible space for innovators to demonstrate, develop, and deploy emerging clean technologies in the fields of renewable energy, energy efficiency, green building, and transportation. The space includes approximately 3,050 square feet of conference rooms, offices, and state-of-the-art space, to be used in common with Habitat for Humanity and the City, for hosting workshops and job training programs related to emerging technologies.

It is important to note that the preparation of a business plan was included during the feasibility and design stages for the CTDC. The key components of the business plan included an assessment of the governance structure, identification of key resources and services to be offered to potential users of the CTDC, and the anticipated sources of private funding and revenue, including the underlying cost structure to determine the sustainability of the site. A summary of the business plan was presented to the Community and Economic Development Committee on October 24, 2011, June 5, 2012, and January 28, 2013. Significant elements of the CTDC and Prospect SV's operating model based on the business plan are presented below.

Prospect Silicon Valley (Prospect SV)

Project Description and Strategic Goals

Prospect Silicon Valley (Prospect SV) was established as a 501(c)3 non-profit public benefit corporation by the City of San Jose, and is designed to provide the critical infrastructure and affordable space for clean technology companies seeking technology demonstration and prototype opportunities, thereby helping to accelerate the introduction of clean tech products into the marketplace. Prospect SV intends to attract companies, talent, and resources to San Jose, and help to accelerate the development of a regional clean technology cluster. Prospect SV will strengthen San Jose's brand as a recognized, national leader in clean tech commercialization.

Through the Demonstration Partnership Policy, the City and its partners are committed to supporting entrepreneurs to develop emerging technologies that become the driving industries of the future. In alignment with the City's Green Vision, Prospect SV's mission is to support and facilitate entrepreneurs developing cleantech solutions that can help San Jose and other cities deliver a cleaner quality of life for people living and working in urban areas. To achieve these objectives, Prospect SV shall be the leading provider of specialized operational infrastructure, capital equipment, networking opportunities, including mentoring and educational services, to emerging clean technology companies, thus promoting a business cluster that provides real-time opportunities to showcase to the public, and pilot, emerging clean technologies.

Prospect SV builds upon the City's Economic Development Strategy, and pioneering Demonstration Partnership Policy adopted by the City Council in 2008, by focusing on clean tech job creation and providing a working place for environmental programming.

Prospect SV has been actively seeking sources of funding from its inception, and thus far has generated over \$500,000 in both committed sponsorships and grants as follows:

- Sponsorships. Since 2012, \$340,000 has been committed by sponsors including Wells Fargo Foundation, Applied Materials Foundation, BMW, DENSO, Siemens, and Cisco for staff and professional resources to support the startup and development of the Demonstration Center, Partnerships, and Programs. Some of this support is committed but not yet distributed to Prospect SV.
- Grants. To date, Prospect SV has been awarded approximately \$200,000 for multi-year grants by the California Energy Commission (CEC) and the United States Department of Energy (USDOE) for staff and resources to support workforce training, technology deployment and stakeholder outreach, and is actively pursuing additional multi-year grants to support the Demonstration Center and supporting commercialization and demonstration support programs.
- Fee-based Services. Once open, the Demonstration Center will produce revenue to Prospect SV based on sub-use agreements, events, and professional assistance to emerging technology companies. Fee-based services are also subsidized by Sponsorships and Grants to ensure the financial stability of the Demonstration Center.

Model and Approach

Technology demonstration and testing programs are critical to bringing pre-commercial technology into market readiness through at-scale performance and cost assessment. Technology demonstration seeks to evaluate the performance and cost effectiveness of these technologies at or near commercial scale. Through hundreds of interactions with City staff, clean technology companies have expressed the importance of physical space to accommodate prototype development and commercial demonstration of emerging clean technology solutions.

The City has ambitious sustainability and economic development goals under the Green Vision, and the Prospect SV platform enables solutions that can leverage City assets and enables leadership among cities across California.

As identified above, Prospect SV will occupy approximately 20,492 square feet of the permitted high-bay, configurable space, which includes labs and office space, together with the shared use of approximately 3,050 square feet of conference/training space at the San Jose Environmental Innovation Center (EIC). Prospect SV will focus on attracting and fostering the following cleantech sectors at the CTDC:

- *Clean Transportation* - Companies and research institutions can work together to design, develop, commercialize, and manufacture prototypes of advanced clean and renewable energy transportation technologies for green fleet vehicles, such as buses and trucks. Prospect SV will house labs and prototype manufacturing space for a series of new clean vehicles. In addition to working with companies and research institutions, Prospect SV will seek to work with the City to test emerging transportation technologies, as the City of San Jose has the largest fleet of vehicles of any city in the Bay Area.
- *Smart Grid Technologies* - Work on developing, deploying and testing advanced smart grid technologies, including the opportunity to plug into the Prospect SV facility infrastructure itself. The smart grid sector includes transmission technology, smart meters, area networking and communication, advanced components manufacturing, demand response and monitoring equipment, smart grid software and other utility-related technology.
- *Batteries and Storage* - Over 30 emerging battery and energy storage companies are located in the San Francisco Bay Area developing battery technologies for electric/hybrid vehicle transportation, the electric grid and consumer electronics. In conjunction with the Lawrence Berkeley National Laboratory, and the CalCharge battery consortium, Prospect SV will offer services, lab facilities, education, and expertise to Silicon Valley's community of battery and storage developers. The batteries and storage sector includes batteries for the automotive, consumer electronics and grid industries, and products such as advanced batteries, thermal energy storage, flywheels and other storage technologies.
- *Solar* - Emerging solar technology companies can demonstrate and test commercial scale applications of new solar technology by plugging directly into the Prospect SV infrastructure. Solar includes voltaic technology such as modules, systems components, and installation.

- *Energy Efficiency* - Energy efficiency technology companies can demonstrate and test new energy efficiency technology for commercial and residential buildings in partnership with Lawrence Berkeley National Lab and real estate developers. Energy efficiency businesses offer some of the most affordable technology solutions, and recently investors have been making much larger investments in this sub-sector. Included in this sector are energy conservation, building-related energy efficiency products, alternative energy appliances (lighting, solar heating, etc.), and energy metering and monitoring devices.
- *Green Workforce Training* - Prospect SV will create a Clean Tech Training Center to help students, employees, contractors, and designers learn about the latest advances in green building materials, energy efficient technologies, solar, clean transportation through courses and workshops, aimed at developing green job skills and creating internship opportunities at the Prospect SV facility and elsewhere.

ANALYSIS

The sublease of the EIC Facility to Prospect SV will create the only publically supported facility in Silicon Valley dedicated to the following sustainable cities technology innovation goals:

1. Provide a public commercial facility that will facilitate prototype development, testing and demonstration of emerging solar, clean transportation, energy efficiency, smart grid, storage and other clean technologies in Silicon Valley.
2. Increase commercialization of grant-funded applied research in clean technologies through partnerships with universities, government agencies and research labs in order to help meet City, State and National environmental priorities.
3. Create a clean tech portal to foster better collaboration among academic partners, national laboratories, start-up companies, incubators, accelerators, business plan competitions, work-force training groups, financiers, and global partners in order to grow the cleantech industry.
4. Become the leading clean technology innovation and commercialization center for Silicon Valley and the world.

The public benefit to the City of San Jose from Prospect SV's operation of the CTDC will also include onsite workforce training and exhibition space to embrace a wide range of non-profit, industry and public agency partner needs. Lastly, the City has ambitious sustainability and economic development goals under the Green Vision, and the Prospect SV platform enables solutions that can leverage City assets and enables leadership among cities across California. In consideration of these goals and the benefits to be derived, staff has determined that a sublease structure in support of the business plan of Prospect SV is material in the success of the operation. Therefore, given the substantial benefits to be received by the City under the sublease, staff recommends that Prospect SV be charged only for operational expenses of its occupancy at the EIC. The other terms and conditions of the sublease to Prospect SV are as follows:

Summary of Major Sublease Terms:

Term: Five (5) Years. Expiring June 30, 2019. The City retains the right to terminate the sublease without cause upon 180 days notice.

Options to Extend: Two (2) three (3) year options to extend.

Rent: None.

Tenant's Share of Operating Expenses: Calculated at \$7,265.00 per month for the first year, subject to an automatic yearly increase of four percent (4%). In support of Tenant's business plan, which indicates a need for a "ramping up" period for revenue generation, the payment of the operating expenses during the first year shall be paid by Tenant as follows: one third or (\$29,060.00) at six months from lease commencement, and two thirds (\$58,120.00) at the twelfth month from lease commencement. The revenue generated from these payments will be deposited into the Integrated Waste Management Fund, which is managed by the Environmental Services Department (ESD).

Premises: Approximately 20,442 square feet of exclusive use space, and approximately 3,050 square feet of non-exclusive use space, consisting of a reception/lobby area and conference rooms.

Condition of Premises: Tenant agrees to accept the Premises delivered in AS-IS, WHERE-IS condition substantially consistent with the Permit Set signed by the Director of Public Works December 16, 2010, which Tenant acknowledges having reviewed and approved.

Furniture Fixtures and Equipment (FF&E): Landlord, at Landlord's expense, in an amount not to exceed \$150,000, shall provide furniture, fixtures, and equipment, to support the successful operation of Tenant's business within the premises. Said FF&E shall remain the property of the Landlord during and after Tenant's occupancy, and shall be in compliance with the restrictions of the New Market Tax Credit Fund. The source of funds to be used for the purchase of the FF&E are as follows: \$50,000 from the Household Hazardous Waste Las Plumas Facility appropriation in the Integrated Waste Management Fund, and \$100,000 from the Economic Development/Incentive Fund appropriation in the General Fund.

Use: The operation of a clean technology demonstration center, as more fully described above. The City Manager is authorized to permit other uses, provided they are secondary to, and do not interfere with the primary "Clean Tech" purpose.

Third Party Use of Center:

It is intended that Tenant will grant rights to third parties to use the Premises provided, however, that no such grant of use rights to a single user (or its affiliates) shall exceed 10,000 square feet, or a period of twelve (12) months, in any twenty-four (24) month period, without written approval of City Manager. Any such grant of use rights shall be made in the form of the "Clean

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Technology Demonstration Center Property Use Agreement” which is attached as an Exhibit to the sublease, unless otherwise approved by the City Manager.

Maintenance, Repairs, and Alterations:

Tenant: Tenant, at Tenant’s sole cost and expense, shall keep and maintain the interior of the Premises in first class condition and repair, including maintaining all plumbing, electrical, lighting fixtures and equipment within the Premises, and all doors, plate glass windows and storefronts (both interior and exterior) in or directly serving the Premises. Any further alterations to the building, which either require a building permit, affect building systems, or are otherwise significant, will need to be approved by Landlord.

Landlord: Except for repairs and replacements to the Premises that Tenant must make above, Landlord shall pay for and make all other repairs and/or replacements to the Premises and the Building.

Tenant Reporting Requirements:

The Tenant shall provide quarterly reports to Landlord, and an annual report to the Community Economic Development Committee, regarding Tenant’s progress and operation of the CTDC. The Tenant reports shall include the following: a financial statement, an accounting statement, a list of the user agreements in effect, a list of the uses to which the Premises were put, evidence of Tenant’s continued tax-exempt status, a list of the Board of Directors and staff, and the Tenant’s business plan for the period August 1 to July 31 of the coming year. Furthermore, because the development of the EIC Facility was financed in part by the Federal New Markets Tax Credit Program (“NMTC Program”), the Landlord is responsible for submitting certain quarterly and annual reports regarding the EIC. Therefore, Tenant further agrees to compile and provide such information, documents, and/or surveys as reasonably requested by Landlord from time to time for compliance with the NMTC Program.

QALICB Consent:

Under the project financing, the City ground leased the EIC to EIC QALICB, Inc. (“QALICB”), which in turn master leased the EIC back to the City. It is under this master lease that the Premises will be subleased by the City to Prospect SV. Under the master lease, this sublease must be approved in advance by QALICB, as master lessor. The terms and conditions of the proposed sublease have previously been presented to the QALICB Board, without objection, and it is anticipated that QALICB’s approval will be granted at their next Board meeting scheduled for May 12, 2014.

Demonstration Approach:

As identified above, City staff has determined through numerous interactions with clean technology companies, that physical space to accommodate technology demonstration and

testing programs is critical to bringing pre-commercial technology into market readiness through at-scale performance and cost assessment. With this in mind, and in conjunction with the City's Green Vision Goals and Demonstration Partnership Policy, Prospect SV intends to attract companies that will utilize the permitted space within the CTDC to accomplish these mutual benefits. However, the CTDC and Prospect SV are envisioned to be more than a physical location and will be seeking to develop a unique set of demonstration assets for launching innovations in buildings, street corridors, public spaces and more. Therefore, the CTDC will serve as the headquarters for Prospect SV to launch demonstration platforms throughout the EIC and across the City. Prospect SV intends to focus on building technologies across multiple buildings, deploy data, demonstrate using vehicles in the City fleet as identified above, and create an innovation corridor that partners with companies on City roads, sidewalks and street lights/light poles, all subject to any permits required.

The specific details of the various assets and their utilization are currently under development and will follow as they evolve. City staff intends to bring to Council for approval by June 2014, modifications to the Demonstration Partnership Policy, which will facilitate demonstrations at both the EIC and in targeted areas throughout the City.

EVALUATION AND FOLLOW-UP

The lease of this property is expected to be effective on or about May 15, 2014. Thereafter, City staff will monitor lease compliance, operations, and maintenance issues through the term of the lease. A Technical Advisory Committee (TAC) will be established from key representatives within the various City departments involved with this project. The TAC shall act as a single point of contact to further advise, facilitate, and direct the needs of Prospect SV at the EIC and future demonstration platforms as they develop.

PUBLIC OUTREACH/INTEREST

- ✓ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

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The sublease meets criterion 1 above and will be posted on the City's website for the May 6, 2014 Council agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the Department of Public Works, and the Environmental Services Department.

COST SUMMARY/IMPLICATIONS

There are no additional cost implications to the General Fund as a result of this action.

Funding for the construction, FF&E, and contingency for the EIC and Prospect SV's occupancy is coming from the Economic Development/Incentive Fund appropriation in the General Fund, with additional source of funds from New Market Tax Credits. Due to unanticipated costs, a maximum of \$50,000 is available from the Household Hazardous Waste Las Plumas Facility appropriation in the Integrated Waste Management Fund for the purchase of FF&E. In support of the Tenant's successful business operation, OED will provide the remaining funding of \$100,000 from the Economic Development/Incentive Fund bringing the total funding to \$150,000 to be used for FF&E purchase.

The sublease structure provides for the Tenant to pay Tenant's share of operational expenses, which are calculated at \$7,265.00 per month for the first year, subject to an automatic yearly increase of four percent (4%). The revenue generated from these payments will be deposited into the City's Integrated Waste Management Fund, which is managed by ESD. The options to extend the sublease apply the revenue in the same manner. The Landlord has the right to terminate the sublease at any time without cause and without payment of additional consideration, with six months written notice.

FISCAL/POLICY ALIGNMENT

This action aligns with the City's Economic Development Strategy #1 "Encourage Companies and Sectors that Can Drive the San Jose/Silicon Valley Economy and Generate Revenue for City Services and Infrastructure."

This memo addresses requirements set forth in State of California AB 562 (California Government Code 53083) for publication of information related to an economic development subsidy and a public hearing. See Appendix A for these disclosures.

This memo is complying with Rules Rule 6.5.c3 to provide information in six required categories for projects with a public subsidy of \$1 million or more. See Appendix A for these disclosures.

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CEQA

Exempt; File No. PP09-138, Mitigated Negative Declaration for the San Jose Environmental Innovation Center, adopted December 1, 2009.

/s/

NANCI KLEIN

Deputy Director of Economic Development

For questions, contact Andy Constable, Real Estate Development Manager at (408) 535-8184.

Appendix A
SUMMARY OF INFORMATION RELATED TO PUBLIC SUBSIDY

I. Information Required Under State Of California AB 562

i. Name/address of benefiting business entity	Prospect Silicon Valley, a California 501(c)3 nonprofit public benefit corporation 1608 Las Plumas Avenue, San Jose, CA 95133
ii. Start and end dates for the subsidy	The Agreement will begin on the start date of the sublease, May 15, 2014 and end on June 30, 2019.
iii. Description of the subsidy, estimated total amount of expenditure of public funds or revenue lost	The project does not involve direct financial assistance, but instead provides for a waiver of the rent on the premises during the original term and option periods. The estimated value of the waived rent during the original term and the two option periods is approximately \$1,550,472. This rent waiver has been an essential component of the City-supported business plan for the EIC since its original inception, and eliminates the need for ongoing direct financial subsidy.
iv. Statement of public purpose	To provide the critical infrastructure and affordable space for clean technology companies seeking technology demonstration and prototype opportunities, thereby helping to accelerate the introduction of clean tech products into the marketplace.
v. Projected tax revenue	The project will potentially contribute to the generation of tax revenue through the future potential sale of the pre-commercial clean tech products that will be tested and demonstrated at the EIC.
vi. Estimated number of jobs created, broken down by full-time, part-time and temporary positions	The project will create approximately 5 full-time positions and approximately 2 part time positions at the EIC. Potential additional jobs will be created indirectly through the facilitation of companies demonstrating and testing pre-commercial clean tech products and technology.

II. Information Required to Comply with City of San Jose Rules Resolution 6.5 c3

i. Accountability	The project is intended to provide the critical infrastructure and affordable space for clean technology companies seeking technology demonstration and prototype opportunities, thereby helping to accelerate the introduction of clean tech products into the marketplace.
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ii. Net Fiscal Impact	<p>There are no additional cost implications to the General Fund as a result of this action.</p> <p>The project does not involve direct financial assistance, but instead provides for a waiver of the rent on the premises during the original term and option periods. The estimated value of the waived rent during the original term and the two option periods is approximately \$1,550,472. The sublease structure provides for the Tenant to pay Tenant's share of operational expenses, which are calculated at \$7,265.00 per month for the first year, subject to an automatic yearly increase of four percent (4%). The revenue generated from these payments will be deposited into the City's Integrated Waste Management Fund, which is managed by ESD. The options to extend the sublease apply the revenue in the same manner. The Landlord has the right to terminate the sublease at any time without cause and without payment of additional consideration, with six months written notice.</p>
iii. Net Job Impact	<p>The project will create approximately 5 full-time positions and approximately 2 part time positions at the EIC. Potential additional jobs will be created indirectly through the facilitation of companies demonstrating and testing pre-commercial clean tech products and technology. City staff will update this information through the reporting required of Prospect SV.</p>
iv. Housing Impact	<p>The majority of employees will be hired from the local labor market into newly created positions. No new demand for Extremely Low Income housing units is expected to be generated by employees of this project.</p>
v. Source of Funds	<p>The project does not involve direct financial assistance, but instead provides for a waiver of the rent on the premises during the original term and option periods. The estimated value of the waived rent during the original term and the two option periods is approximately \$1,550,472. See Memo section titled "Cost Summary/Implications" for information on anticipated City costs and revenues related to the project.</p>
vi. Neighborhood Impacts	<p>No significant impacts are anticipated on traffic or public infrastructure such as parks, community centers, and libraries.</p>